

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CORY HILARIO

Plaintiff

v.

JEFFREY L. SCHMEHL, et al.

Defendants

:
:
:
:
:
:
:

CIVIL ACTION NO. 20-CV-1064

ORDER

AND NOW, this *26th* day of October, 2020, upon consideration of Cory Hilario's Motion to Proceed *In Forma Pauperis* (ECF No. 5), Prisoner Trust Fund Account Statement (ECF No. 6), and *pro se* Complaint (ECF No. 1), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. Corey Hilario, # 76610-066, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Warden of FCC - Allenwood or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Mr. Hilario's inmate account; or (b) the average monthly balance in Mr. Hilario's inmate account for the six-month period immediately preceding the filing of this case. The Warden or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Mr. Hilario's inmate trust fund account exceeds \$10.00, the Warden or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income

credited to Mr. Hilario's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court is directed to **SEND** a copy of this Order to the Warden of FCC - Allenwood.

4. The Complaint is **DEEMED** filed.

5. Mr. Hilario's Complaint is **DISMISSED WITHOUT PREJUDICE**, as legally baseless pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). The dismissal is without prejudice to Mr. Hilario filing a motion to vacate his sentence pursuant to 28 U.S.C. § 2255 in his criminal case, and without prejudice to Mr. Hilario reasserting his claims for damages and declaratory relief in a new civil action only in the event his underlying conviction is reversed, vacated, or otherwise invalidated. Mr. Hilario is not given leave to file an amended complaint in this case.

6. The Clerk of Court shall **CLOSE** this case.

BY THE COURT:



GENE E.K. PRATTER, J.